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VIA FIRST CLASS AND ELECTRONIC MAIL

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Re: Monsanto Company's February 16, 2015, Petition to Cancel Glyphosate Registrations of Repar-Glypho, LLC (EPA Registration Numbers 86004-1, 86004-2, 86004-3, 86004-5, 86004-6)

Dear Ms. Goerke and Mr. Rosenblatt:

On behalf of Monsanto Company ("Monsanto"), this correspondence addresses the recent letter to you from Repar-Glypho, LLC ("Repar-Glypho") regarding Monsanto's Petition to Cancel the above-referenced glyphosate registrations of Repar-Glypho. For the reasons set forth below and in its Petition to Cancel, Monsanto respectfully requests that EPA move forward with the cancellation of these registrations without delay.

On July 19, 2016, as a result of Monsanto's Petition to Cancel, EPA issued a letter to Repar-Glypho notifying it that (i) EPA has determined that Repar-Glypho failed to comply with the terms of the settlement agreement concerning data compensation entered into by Monsanto and Repar-Glypho and (ii) EPA intends to cancel the above-referenced glyphosate registrations of Repar-Glypho pursuant to FIFRA Section 3(c)(1)(F)(iii), 7 U.S.C. Section 136a(c)(1)(F)(iii);

and, 40 CFR Section 152.99(c)(2).¹ Pursuant to these provisions, EPA's July 19, 2016 letter provided Repar-Glypho with 15 days to respond to EPA's notice of intent to cancel Repar-Glypho's glyphosate registrations. By way of a letter to you dated August 4, 2016, from N. Bhushan Mandava, Agent for Repar-Glypho, LLC, Repar-Glypho responded to EPA's July 19 letter ("Repar-Glypho's Response").

Repar-Glypho's Response contains several statements which are unsupported and/or inaccurate. Monsanto does not believe it is necessary to respond in detail to each of these statements because, as set forth in Monsanto's Petition to Cancel, and further addressed below, the only issue for EPA's consideration is whether Repar-Glypho has failed to comply with the terms of an agreement on data compensation. As to that issue, both Monsanto and Repar-Glypho agree: Repar-Glypho has been in default of its payment obligations under the parties' data compensation settlement agreement for nearly two years.

EPA's regulations at 40 CFR Section 152.99(c)(2) make it clear that, having received a response from Repar-Glypho to EPA's notice of intent to cancel, EPA's only task is to determine whether Repar-Glypho's response affects the Agency's determination that Repar-Glypho has failed to comply with the terms of its data compensation settlement agreement with Monsanto: "If the Agency determines, after considering any response, that the affected ...registrant has acted in the ways described by paragraph (a)(1) of this section, the Agency **will**...cancel the registration without further hearing." 40 CFR Section 152.99(c)(2)(emphasis added). Repar-Glypho's response does not dispute and, in fact, concedes the Agency's determination that Repar-Glypho failed to comply with its data compensation settlement agreement with Monsanto. *See* Repar-Glypho's Response at 3 ("Repar did not have resources to pay the data compensation amount and was in default."). This admission confirms Repar-Glypho's earlier similar statement made to Monsanto, included in Monsanto's Petition to Cancel. *See* E-mail dated January 2, 2015, from Bhushan Mandava to Louis Lucas, Monsanto's Petition to Cancel, Attachment 4, Exhibit E ("As you know, Repar-Glypho entered into an agreement...with Monsanto regarding the payment of data compensation in Installments for three years. Repar-Glypho is now in default because it did not have the resources to pay the September 30, 2014 Installment. That situation continues to this day: Although Repar-Glypho has the intent to pay, Repar does not have the money to pay to Monsanto to cure the default."). Thus, there is simply no dispute that Repar-Glypho has failed to comply with its payment obligations under its data compensation settlement agreement with Monsanto, and that fact alone is sufficient for EPA to move forward with the cancellation of Repar-Glypho's glyphosate registrations. FIFRA Section 3(c)(1)(F)(iii), 7 U.S.C. Section 136a(c)(1)(F)(iii); 40 CFR Section 152.99(a)(1)(ii), 152.99(c)(2).

¹ EPA's July 19 letter referred once to Repar-Glypho as "NewAgco," but this was clearly just a typographical mistake given the overall content of the letter.

Repar-Glypho's Response also makes certain statements about confidential negotiations between the parties in advance of their data compensation settlement agreement, as well as Repar-Glypho's post-default meeting with and communications to Monsanto. But nothing in Repar-Glypho's Response changes the fact that Repar-Glypho "failed to comply with the terms of an agreement on compensation." 40 CFR Section 152.99(a)(1)(ii). Moreover, Repar-Glypho's Response omits the fact that Monsanto attempted to accommodate Repar-Glypho by agreeing to two amendments to the parties' settlement agreement that significantly extended Repar-Glypho's time to make payments. It was only after Repar-Glypho had breached the payment schedule as twice revised that Monsanto took action on the default. And, as EPA can see from Repar-Glypho's Response, there has been absolutely no basis for Monsanto to believe that Repar-Glypho would ever cure its default.

Repar-Glypho's Response also argues that its glyphosate registrations should not be cancelled because Repar-Glypho has already paid more to Monsanto in data compensation than other similarly situated glyphosate follow-on registrants that settled with Monsanto. Repar-Glypho offers no evidence to support this claim. And, of course, this argument has absolutely no relevance to EPA's determination that Repar-Glypho has failed to comply with the parties' data compensation settlement agreement. Moreover, as with Repar-Glypho, the confidential data compensation settlements that Monsanto reached with other follow-on glyphosate registrants were the result of arms-length negotiations, data sets, methods of data reliance, and other circumstances unique to each follow-on registrant. Repar-Glypho is not entitled to a determination that it should pay less than dictated by its settlement agreement with Monsanto because other follow-on glyphosate registrants may have paid less, just as Monsanto would not be entitled to a determination that Repar-Glypho should pay more than the amount it agreed to pay because other registrants may have paid more than Repar-Glypho agreed to pay.

Finally, Repar-Glypho argues that the size of the arbitration panel's award in the *Monsanto Company and Tacoma Ag, LLC* matter (American Arbitration Association, FIFRA Case No. 16 171 Y 00228 10) should have some bearing on whether EPA should cancel Repar-Glypho's glyphosate registrations. But this argument is similarly meritless as it has absolutely no relevance to EPA's determination that Repar-Glypho has failed to comply with the parties' data compensation settlement agreement. Moreover, Repar-Glypho's Response fails to mention that there are actually *two* publicly available glyphosate-related arbitration awards. In the other, later award, *Monsanto Company and Ritter Chemical, LLC* (American Arbitration Association, FIFRA Case No. 16 171 Y 00450 10), the arbitration panel awarded Monsanto \$1,821,239. This award, which is attached, is, of course, far greater than the amount Repar-Glypho paid before it defaulted on its settlement agreement with Monsanto.

Based on the foregoing and Monsanto's Petition to Cancel, the requirements of FIFRA's registration cancellation provision regarding failure to comply with the terms of a data

compensation settlement agreement and EPA's related regulations have been met and EPA should now cancel the above-referenced glyphosate registrations of Repar-Glypho without further hearing. FIFRA Section 3(c)(1)(F)(iii), 7 U.S.C. Section 136a(c)(1)(F)(iii); and, 40 CFR Section 152.99(c)(2).

Please do not hesitate to contact us in the event that you have any questions or need further information.

Sincerely,



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Enclosure

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